

DOCUMENT RESUME

08114 - [C3348432]

[Protest against Award of Lease to Melvin J. Powers]. B-191744. November 27, 1978. 5 pp.

Decision re: Clyde C. Rogers; by Milton J. Socclar, General Counsel.

Contact: Office of the General Counsel: Procurement Law II.

Organization Concerned: Public Buildings Service.

Authority: 57 Comp. Gen. 89, -4 C.F.R. 20. B-189571 (1978).

B-185570 (1976). B-186939 (1977). E-189450 (1977). B-188602 (1977).

A company protested the award of a lease, contending that: agency personnel improperly assisted the awardee in preparing his offer; evaluation of the lease option periods would make the protester's offer more advantageous to the Government; and real estate offered by the protester would result in better utilization of real property in the area. Bases for protest involving solicitation award criteria and improper actions by personnel were untimely filed, and vague, unsupported allegations of impropriety did not establish a basis for using the "significant issue" exception to timeliness requirements. An allegation that the agency's failure to consider land utilization factors in evaluating offers was improper and lacked legal merit since such considerations were not specified as a basis for evaluation. (HTW)

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

8432

FILE: B-191744

DATE: November 27, 1978

MATTER OF: Clyde C. Rogers

DIGEST:

1. Protest which questions solicitation award criteria which is filed after receipt of initial proposals and more than 10 working days after basis for other allegation of protest is known or should have been known is untimely and will not be considered on merits.
2. Protest which contains only vague and generalized allegations of impropriety, with nothing of substance to support such allegations, does not establish a basis for invoking "significant issue" exception to GAO requirement for filing timely protest.
3. Allegation that agency's failure to consider land utilization factors in evaluating offers was improper is without legal merit where such considerations are not specified as a basis for evaluation.

Clyde C. Rogers (Rogers) protests the award of a lease for a motor pool facility in San Francisco to Melvin J. Powers (Powers) by the Public Buildings Service, Region 9, General Services Administration (GSA), San Francisco, California as a result of solicitation for offers (SFO) GS-90B-77468, issued September 26, 1977. Initial offers were required to be received by October 21, 1977.

Rogers contends that the award to Powers was improper because (1) GSA personnel improperly assisted Powers in preparing his offer, (2) evaluation of the lease

option periods makes Rogers' offer more advantageous to the Government, and (3) better utilization of real property in the San Francisco area would result from the use of the real estate offered by Rogers than Powers.

The SFO requested offers to lease to the U.S. Government a motor pool facility within certain designated boundaries of San Francisco, California, for a firm period of twenty years with two additional five year option periods.

Rogers submitted his initial offer on October 21, 1977, at an average annual square foot rental of \$1.975. A revised offer was submitted by Rogers on December 5, 1977 in response to a request from the GSA. The revised offer, which reduced the paved parking area by 25,722 square feet, had a proposed total average annual rental of \$2.20 per square foot. Powers offered a facility for an annual average square foot rental of \$1.976. Notice of acceptance of Powers' offer was sent to Powers on February 10, 1978. By letter dated February 7, 1978, Rogers was advised that his revised offer was rejected "as it had been determined to be in the best interests of the Government to award the contract to the lowest offeror as to price." Award was based on the lower average annual square foot rental for the initial twenty year term of Power's offer.

By letter to this Office, dated April 17, 1978, Rogers protested the award to Powers. The protest states that Rogers met with the GSA personnel handling the lease agreement a week or two following announcement of the final award. The report submitted by the agency confirms that the contracting officer had a meeting with Rogers within two weeks after February 10, 1978. In correspondence received subsequent to the protest, counsel for Rogers states that Rogers investigated the matters set forth in the protest through April 12, 1978 and alleges that his client "did not learn of those facts which give rise to the complaint until after numerous contacts with the GSA, and after he discovered, in fact, that there had been direct participation by way of preferential treatment, and direct figuring by an employee of the GSA in order to assure that the successful bidder would receive the award." It is also asserted that:

"Discovery of these facts was not possible within ten days from that date that Mr. Rogers met with the GSA representative and, involved security plot maps, review of records of the State of California, analysis of values for the parcels, comparison of the square footage of the parcels, and other significant factors."

In order for a protest that does not concern an alleged solicitation impropriety to be timely filed, it must be received in our Office within 10 working days after the basis for the protest is known or should have been known, whichever is earlier. 4 C.F.R. 20.2(b) (2) (1978). Protests which concern an alleged impropriety in the solicitation must be filed prior to the date set for the receipt of initial offers. 4 C.F.R. 20.2 (b)(1).

With respect to the protester's allegation that the GSA gave improper assistance to Powers, Rogers' counsel states in pertinent part that:

"A week or two following the announcement of the final award, Mr. Rogers met with the GSA Leasing Specialist handling the matter, and was informed that the successful bidder did not know exactly how to place the figures on the form 1364 and that she, in fact, assisted him in completing the form." * * *

Thus by Rogers' own admission he was aware at least by the end of February 1978 of what he now asserts was improper conduct by GSA personnel. Nonetheless, it was not until April 21 that Rogers filed his protest, considerably in excess of 10 working days after this basis of the protest was known or should have been known. Also, except for his vague and general allegations of impropriety, Rogers has offered nothing of substance to support his claim. We do not view the GSA leasing specialist's alleged admission that she assisted Rogers in completing Form 1364 (prior to the opening of sealed offers, for example) as in itself establishing anything improper and, therefore, also find no basis for involving the "significant issue" exception to our 10 day filing requirements. 4 C.F.R. 20.2(3)(c). We therefore will not consider this issue.

In regard to the allegation concerning GSA's failure to evaluate the lease option periods, the SFO provides that:

"The cost evaluation for offers containing multiple types of space will be made on the basis of the composite foot rate per annum for the initial lease term.

* * * * *

"In evaluating offers received in response to this solicitation, only the rental rate offered by the initial lease term will be considered. However, negotiations will be conducted to obtain the most reasonable rental offer possible for both the initial term and the renewal period."

This basis of Rogers' protest is an attack on the award criteria in the SFO and is likewise untimely as it involves an alleged impropriety in the solicitation which was apparent prior to receipt of initial offers and should have been raised prior to that time.

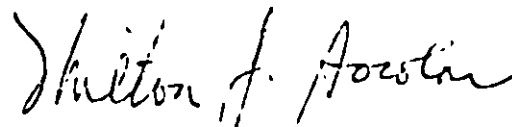
For the above reasons, we view the protest with respect to those two issues as untimely and consequently it is dismissed without consideration of its merits. Annapolis Tennis Limited Partnership, B-189571, June 5, 1978, 78-1 CPD 412; Cf. Century Tool Company, Inc., B-185570, April 6, 1976, 76-1 CPD 227.

The last basis for protest offered by Rogers concerns what in his opinion would be better land utilization in the San Francisco area if the lease were awarded to him. Thus he claims that in order to determine his basis for protest in this respect, he was required to obtain security plot maps, review the records of the State of California, analyze values for the parcels, and compare the square footage of the parcels prior to filing his protest. The difficulty with this argument is simply that while some factors relative to the location of the parcels offered were to be considered under the award factors, the land utilization considerations with which Rogers is concerned were not specified as

a basis for the evaluation of offers received under the SFO and it would have been improper for GSA to take that factor into account in evaluating proposals. See, e.g., General Telephone Company of California, 57 Comp. Gen. 89 (1977), 77-2 CPD 376.

The protester has requested that a conference be held in accordance with section 2.7 of our Bid Protest Procedures. This provision provides that "[a] conference on the merits of the protest with members of the Office of General Counsel, General Accounting Office may be held at the request of the protester * * *." (Emphasis added.) The purpose of a conference in connection with a bid protest is to clarify issues and factual situations and provide a better understanding of each party's position. We do not believe that a conference to discuss either the issue of the timeliness of the protest or the third protest issue, which clearly is without legal merit, would serve a useful purpose and would only cause further delay in settling this matter. In analogous situations where we have dismissed a protest, we have declined to hold a requested conference. See Department of Commerce-Request for Reconsideration, B-186939, December 16, 1977, 77-2 CPD 469; M.C.&F. Capital Corporation--Reconsideration, B-189450, August 25, 1977, 77-2 CPD 148; Plaza de las Armas, Inc., B-188602, June 30, 1977, 77-1 CPD 468.

Notwithstanding the above, however, we are concerned with the long delay encountered in receiving GSA's report on this protest. That report, which only discussed the issue of timeliness, was not received until more than four and one-half months after it was requested. We are, therefore, by separate letter of today, bringing this delay to the attention of the Administrator of General Services.



Milton J. Socolar
General Counsel